

EXHIBIT E

The New York Times

AZMAT KHAN | AZMAT.KHAN@NYTIMES.COM | 347-852-2585

RE: FREEDOM OF INFORMATION ACT REQUEST

Submitted To: usarmy.belvoir.hqda-oaa-ahs.mbx.rmda-foia@army.mil

Oct. 6, 2022

Dear U.S. Army FOIA Coordinator,

This is an urgent request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), with a request for expedited processing.

This request seeks specific U.S. Army records regarding a **civilian casualty incident in Baghuz, Syria on March 18, 2019**. Should you need any help identifying the incident in question, please see **EXHIBITS 1-7**, all of which are official military records and statements regarding the incident in question.

In order to facilitate the location of responsive records, I have included official U.S. Army records and statements that identify the incident in question and confirm the existence of the requested records. In order to demonstrate a compelling need for expedited processing, I have included exhibits as described below and easily indexed in Section IV..

Please find my full request below.

I. REQUESTED RECORDS

Pursuant to the FOIA I hereby request copies of the following civilian casualty review records related to the March 18, 2019 airstrike incident in Baghuz, Syria:

The Independent Review Records: This U.S. Army review was led by Gen. Michael X. Garrett, as referenced in the U.S. Army “Executive Summary” that is attached with this request as **EXHIBIT 1**. The independent review records should also include the:

1. “initial findings and recommendations” submitted on 25 February 2022, which are referenced in **EXHIBIT 1**;
2. the “addendum report” submitted on 4 April, 2022, which is referenced in **EXHIBIT 1**;
3. any enclosed or referenced Commander-Directed Investigation records, Lessons Learned records, briefing records, initial assessment records, credibility assessment records, closure report records, and after action review records;
4. the “124 documents, 25 reports, and 29 hours of video feed” that were reviewed by Gen. Garrett’s committee as referenced in **EXHIBIT 1**.

This request seeks all enclosures, exhibits and attachments within these records, including but not limited to the following: collateral damage estimates (CDE), legal reviews, mIRC logs or other chat and internet relaying message logs, Full Motion Video (FMV), Weapons System Video (WSV), ISR, or other video referenced, solatia assessments, emails, photos, post-strike imagery, screenshots, still image captures, and other images enclosed with these records.

The time period for responsive records is from March 18, 2019 to the time of search.

As the FOIA requires, please release all reasonably segregable, nonexempt portions of responsive records. If you choose to deny any portion of my request, please provide a written explanation for the denial, including a reference to the specific statutory exemption(s) authorizing the withholding of all or part of the record, as well as an explanation of why U.S. Army “reasonably foresees that disclosure would harm an interest” protected by that exemption or why “disclosure is prohibited by law[.]”” 5 U.S.C. § 552 (a)(8).

Please provide all responsive records in electronic format.

II. FEE CATEGORIZATION AND REQUEST FOR FEE WAIVER

In order to help you determine my status to assess fees, you should know that I am a reporter and this request is made in connection with my ongoing journalistic work, not for commercial use.

I am an investigative reporter with the New York Times and New York Times Magazine, and have been recognized with more than a dozen awards for my reporting, including the 2022 Pulitzer Prize for International Reporting, the 2022 National Magazine Award for Public Interest Journalism; the 2018 National Magazine Award for Reporting; the 2022 Polk Award for Military Reporting; the 218 Overseas Press Club’s Ed Cunningham Award for Magazine Reporting, the 2022 Roy Rowan Award for Investigative Reporting; the 2018 Hillman Prize for Magazine Journalism; the 2022 John Seigenthaler Courage In Journalism Award; the 2016 Deadline Club Award for Independent Digital Reporting; and other honors.

Accordingly, as a representative of the news media, I am only required to pay for document duplication charges after the first 100 pages.

In addition, I am requesting a waiver of all fees associated with this request per 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.12. As noted above I am a reporter seeking these records for dissemination to the general public through my reporting, not for a commercial use. *See* OMB Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10019 (“a request for records supporting the news dissemination of the requester shall not be considered to be a request that is for the commercial use.”).

Additionally, disclosure of this information is likely to contribute significantly to public understanding of the operations or activities of the federal government, specifically U.S. Army’s efforts to independently investigate its Combatant Commands’ investigations of civilian casualties resulting from its operations in Syria, how the federal government determines who is a civilian, and the circumstances in which self-defense airstrikes are authorized, all of which have been the subject of enormous public interest, as evidenced in **EXHIBITS 8-33**.

If my request for a fee waiver is denied, I am willing to pay up to a maximum of \$100 for duplication fees associated with this request. If you estimate fees will exceed this limit, please inform me before proceeding.

III. REQUEST FOR EXPEDITED PROCESSING:

Per 5 U.S.C. § 552(A)(6)(E)(v) and 32 C.F.R. § 286.8(e)(3), I certify that this statement of compelling need for expedited processing is true and correct to the best of my knowledge and belief.

There is a compelling need for expedited processing of this request, because I am a “full-time member of the news media[,]” 32 C.F.R. 286.8(e)(3) and am “primarily engaged in disseminating information,” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

First, there is widespread and well-documented public interest in the details of this civilian casualty incident, which was reported on extensively by my colleagues at the New York Times (see [EXHIBITS 8-12](#)), eliciting widespread media coverage over the last year (see [EXHIBITS 20-33](#)), as well as criticism of the lack of transparency and calls for reform from military officials, Congressional leaders, military experts and civil society organizations (see [EXHIBITS 13-19](#)).

Second, given that the “Independent Review” of this incident was recently completed, and only a two-page “Executive Summary” from it ([EXHIBIT 1](#)) was made public, there is additional urgency to release the requested records now, particularly given the many calls to make the full review public. (Find multiple such calls in [EXHIBITS 15-19](#)). Many calling for its release have articulated the news value of its contents regarding crucial decisions being made by the federal government. For example on May 19, 2022, the Center for Civilians in Conflict published the following statement asking the Pentagon to make the full review public:

“The review has not been made public, and the published summary does not provide adequate transparency around how the investigation was conducted. We do not know whether and to what extent civilian victims, survivors, or witnesses were consulted; the standards and definitions used for determining civilian or combatant status; or the specific findings of the investigation and how investigators reached their conclusions. The U.S. military is asking us again to trust its own investigation of its own conduct. After years of repeated mistakes and flawed investigations, the public, including the civilian victims and survivors of this strike, deserves more transparency. The Defense Department should make the full review public and provide more information about how it came to its conclusions.” ([EXHIBIT 16](#).)

Third, my and my colleagues’ reporting published in the New York Times ([EXHIBITS 35-42](#)) has repeatedly shown systemic flaws in the military’s civilian casualty review process, lack of transparency until litigation, and journalism that is in the public interest. Additionally, recent statements by military officials — acknowledging that the military was not “always as transparent about those mistakes as we should be” and recognizing that New York Times reporting on civilian casualties by me and my colleagues “made a real difference” — help illustrate the need for greater transparency and the value of such journalism (see [EXHIBIT 7](#)).

In his May 17, 2022 Memorandum on the review of the Baghuz civilian casualty incident ([EXHIBIT 5](#)), Defense Secretary Austin wrote that he was “disappointed” in the handling of the initial review, which “contributed to a perception that the department was not committed to transparency and was not taking the incident seriously,” which could have been prevented by “a timely review.”

Such a “timely” release of these records would help address key gaps in information.

Because I am primarily engaged in disseminating information and there is an “urgency to inform the public concerning actual or alleged Federal Government activity[,]” 5 U.S.C. § 552(a)(6)(E)(v)(II), as detailed above, this request is entitled to expedited processing.

IV. INDEX OF EXHIBITS

Exhibit #	Exhibit Source	Exhibit Title	Also Available Online At:
EXHIBIT 1	Department of the Army:	EXECUTIVE SUMMARY: REVIEW OF THE CIVILIAN CASUALTY INCIDENT THAT OCCURRED ON 18 MARCH 2019 IN BAGHUZ, SYRIA	https://int.nyt.com/data/documenttools/mfr-for-secdef-v/21afedb925372e3b/full.pdf
EXHIBIT 2	CENTCOM:	STATEMENT RE: BAGHOUZ STRIKE BY CENTCOM SPOKESMAN CAPT. BILL URBAN	Find Enclosed
EXHIBIT 3	CENTCOM:	U.S. CENTRAL COMMAND STATEMENT TO CORRECT THE RECORD FROM CAPT. BILL URBAN.	https://www.centcom.mil/MEDIA/PRESS-REL/EASES/Press-Release-View/Article/2844585/us-central-command-statement-to-correct-the-record-from-capt-bill-urban/
EXHIBIT 4	Secretary of Defense:	JAN. 27, 2022 MEMORANDUM FROM DEFENSE SECRETARY LLOYD J. AUSTIN III	https://int.nyt.com/data/documenttools/dod-imp-roving-civilian-harm-mitigation-and-response/293b9907eefc2580/full.pdf
EXHIBIT 5	Secretary of Defense:	MAY 17, 2022 MEMORANDUM FROM DEFENSE SECRETARY LLOYD J. AUSTIN III	https://int.nyt.com/data/documenttools/sd-memo-to-coco-ms/609b5c84be4a696e/full.pdf
EXHIBIT 6	Dept. of Defense News::	AUSTIN ORDERS REVIEW OF 2019 BAGHOUZ AIRSTRIKES THAT KILLED SYRIAN CIVILIANS	https://www.defense.gov/News/News-Stories/Article/Article/2855172/austin-orders-review-of-2019-baghuz-airstrikes-that-killed-syrian-civilians/
EXHIBIT 7	Department of Defense:	PENTAGON PRESS SECRETARY JOHN F. KIRBY HOLDS A PRESS BRIEFING	https://www.defense.gov/News/Transcripts/Transcript/Article/3027227/pentagon-press-secretary-john-f-kirby-holds-a-press-briefing/
EXHIBIT 8	New York Times:	HOW THE U.S. HID AN AIRSTRIKE THAT KILLED DOZENS OF CIVILIANS IN SYRIA	https://www.nytimes.com/2021/11/13/us/us-airstrikes-civilian-deaths.html
EXHIBIT 9	New York Times:	PENTAGON CHIEF ORDERS BRIEFING ON 2019 SYRIA AIRSTRIKE THAT KILLED DOZENS	https://www.nytimes.com/2021/11/15/us/politics/pentagon-syria-airstrike.html
EXHIBIT 10	New York Times:	PENTAGON CHIEF SAYS MORE MUST BE DONE TO PREVENT CIVILIAN HARM	https://www.nytimes.com/2021/11/17/us/politics/austin-pentagon-syria-airstrike.html
EXHIBIT 11	New York Times:	PENTAGON CHIEF ORDERS NEW INQUIRY INTO U.S. AIRSTRIKE THAT KILLED DOZENS IN SYRIA	https://www.nytimes.com/2021/11/29/us/politics/pentagon-airstrike-syria.html
EXHIBIT 12	New York Times:	PENTAGON FAULTS REVIEW OF DEADLY AIRSTRIKE BUT FINDS NO WRONGDOING	https://www.nytimes.com/2022/05/17/us/politics/us-airstrike-civilian-deaths.html
EXHIBIT 13	Just Security:	QUESTIONS ON THE BAGHOUZ STRIKES	https://www.justsecurity.org/79218/questions-on-the-baghuz-strikes/
EXHIBIT 14	Sen. Elizabeth Warren:	WARREN CALLS FOR SENATE ARMED SERVICES COMMITTEE INVESTIGATION INTO COVERUP OF THE BAGHOUZ AIRSTRIKE THAT KILLED APPROXIMATELY 70 WOMEN AND CHILDREN AND WAS FLAGGED AS A POTENTIAL WAR CRIME	https://www.warren.senate.gov/newsroom/press-releases/warren-calls-for-senate-armed-services-committee-investigation-into-coverup-of-the-baghuz-airstrike-that-killed-approximately-70-women-and-children-and-was-flagged-as-a-potential-war-crime
EXHIBIT 15	Airwars:	AIRWARS CALL FOR MORE INFORMATION ABOUT BAGHOUZ STRIKE	https://twitter.com/airwars/status/1526858199647010817
EXHIBIT 16	Center for Civilians In	CIVIC ASKS PENTAGON TO RELEASE FULL FINDINGS OF PROBE INTO DEADLY BAGHOUZ	https://civiliansinconflict.org/press-releases/civic-asks-pentagon-to-release-findings-of-probe-in

	Conflict:	AIRSTRIKE	to-deadly-baghuz-airstrike/
EXHIBIT 17	Human Rights Watch:	U.S. FLAWED MILITARY REVIEW OF CIVILIAN CASUALTIES IN SYRIA	https://www.hrw.org/news/2022/05/19/us-flawed-military-review-civilian-casualties-syria
EXHIBIT 18	Sen. Patrick Leahy:	LETTER FROM SENATOR PATRICK LEAHY TO DEFENSE SECRETARY LLOYD J. AUSTIN III RE: BAGHуз CIVILIAN CASUALTY INCIDENT	Not Available Online; Find Enclosed
EXHIBIT 19	Center for Civilians In Conflict:	THE FAILURES OF THE BAGHуз STRIKE INVESTIGATION	https://inkstickmedia.com/the-failures-of-the-baghуз-strike-investigation/
EXHIBIT 20	Reuters:	U.S. MILITARY HID AIRSTRIKES THAT KILLED DOZENS OF CIVILIANS IN SYRIA -NYT	https://www.reuters.com/world/middle-east/us-military-hid-airstrikes-that-killed-dozens-civilians-syria-nyt-2021-11-13/
EXHIBIT 21	Guardian:	US CLAIMS 2019 AIRSTRIKE THAT HIT SYRIAN WOMEN AND CHILDREN WAS JUSTIFIED	https://www.theguardian.com/us-news/2021/nov/14/us-confirms-2019-airstrike-hit-crowd-of-syrian-women-and-children
EXHIBIT 22	BBC:	US DEFENDS AIR STRIKES THAT KILLED CIVILIANS IN SYRIA	https://www.bbc.com/news/world-us-canada-59279585
EXHIBIT 23	The Intercept:	THE U.S.-LED BOMBINGS THAT ENDED THE ISIS “CALIPHATE” KILLED SCORES OF CIVILIANS	https://theintercept.com/2021/11/18/isis-syria-us-airstrikes-civilians-killed/
EXHIBIT 24	Task & Purpose:	THE MILITARY KEEPS FINDING IT DID NOTHING WRONG WHEN IT INVESTIGATES ITSELF	https://taskandpurpose.com/news/military-investigations-syria-airstrike/
EXHIBIT 25	CNN:	US ADMITS IT KILLED MULTIPLE CIVILIANS IN SYRIA AIR STRIKES DAYS BEFORE FALL OF ISIS IN 2019	https://www.cnn.com/2021/11/15/politics/us-military-airstrike-syria-civilians/index.html
EXHIBIT 26	The Hill:	WARREN CALLS FOR SENATE PROBE OF 2019 SYRIAN AIRSTRIKE THAT KILLED DOZENS OF CIVILIANS	https://thehill.com/policy/defense/582362-warren-calls-for-senate-probe-of-2019-syrian-airstrike-that-killed-dozens-of/
EXHIBIT 27	Bloomberg:	HOW THE U.S. MILITARY MISHANDED WHISTLE-BLOWER TIPS ON CIVILIANS KILLED IN SYRIA	https://www.bloomberg.com/news/articles/2021-11-18/u-s-command-faulted-on-probe-of-civilian-toll-in-syria-strikes
EXHIBIT 28	New York Magazine:	U.S. COVERED UP DEATH TOLL OF 2019 SYRIA AIRSTRIKE: REPORT	https://nymag.com/intelligencer/2021/11/u-s-covered-up-death-toll-of-2019-syria-airstrike-report.html
EXHIBIT 29	Forbes:	U.S. MILITARY CONFIRMS 2019 SYRIAN AIRSTRIKE KILLED CIVILIANS	https://www.forbes.com/sites/marisadellatto/2021/11/14/us-military-confirms-2019-syrian-airstrike-killed-civilians/?sh=799561351805
EXHIBIT 30	Washington Post:	PENTAGON INQUIRY REJECTS CLAIMS U.S. COVERED UP CIVILIAN DEATHS IN SYRIA	https://www.washingtonpost.com/national-security/2022/05/17/pentagon-civilian-deaths-baghuz-syria/
EXHIBIT 31	CNN:	PENTAGON DOESN'T HOLD ANYONE ACCOUNTABLE FOR 2019 SYRIA STRIKE THAT KILLED FOUR CIVILIANS FOLLOWING REVIEW	https://www.cnn.com/2022/05/17/politics/pentagon-syria-strike-review/index.html
EXHIBIT 32	BBC:	US MILITARY PROBE FINDS NO WRONGDOING IN DEADLY SYRIA AIR STRIKE	https://www.bbc.com/news/world-us-canada-61492436
EXHIBIT 33	France 24:	PENTAGON PROBE REJECTS CLAIMS US COVERED UP CIVILIAN DEATHS IN SYRIA AIRSTRIKE	https://www.france24.com/en/middle-east/20220518-pentagon-probe-rejects-claims-us-covered-up-civilian-deaths-in-syria-airstrike
EXHIBIT 34	New York	HIDDEN PENTAGON RECORDS REVEAL PATTERNS OF	https://www.nytimes.com/interactive/2021/12/1

	Times:	FAILURE IN DEADLY AIRSTRIKES	https://www.nytimes.com/2021/12/19/magazine/us-airstrikes-pentagon-records-civilian-deaths.html
EXHIBIT 35	New York Times:	THE HUMAN TOLL OF AMERICA'S AIR WARS	https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html
EXHIBIT 36	New York Times:	THE CIVILIAN CASUALTY FILES: READ THE PENTAGON RECORDS	https://www.nytimes.com/interactive/2021/us/civilian-casualty-files.html
EXHIBIT 37	New York Times:	DOCUMENTS REVEAL BASIC FLAWS IN PENTAGON DISMISSALS OF CIVILIAN CASUALTY CLAIMS	https://www.nytimes.com/2021/12/31/us/pentagon-airstrikes-syria-iraq.html
EXHIBIT 38	New York Times:	NEWLY DECLASSIFIED VIDEO SHOWS U.S. KILLING OF 10 CIVILIANS IN DRONE STRIKE	https://www.nytimes.com/2022/01/19/us/politics/afghanistan-drone-strike-video.html
EXHIBIT 39	New York Times:	A DAM IN SYRIA WAS ON A 'NO-STRIKE' LIST. THE U.S. BOMBED IT ANYWAY.	https://www.nytimes.com/2022/01/20/us/airstrike-us-isis-dam.html
EXHIBIT 40	New York Times:	AUSTIN ORDERS U.S. MILITARY TO STEP UP EFFORTS TO PREVENT CIVILIAN HARM	https://www.nytimes.com/2022/01/27/us/politics/us-airstrikes-rand-report.html
EXHIBIT 41	New York Times:	PENTAGON PRAISES A TIMES SERIES THAT EXPOSED CIVILIAN DEATHS IN AIR WAR	https://www.nytimes.com/2022/05/12/business/pentagon-civilian-deaths-pulitzer.html

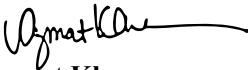
V. CONCLUSION

Please provide electronic copies of any responsive records to me at my email address, Azmat.Khan@nytimes.com, including any links for download.

If you have any questions regarding this request, please contact me by email or by phone at 347 - 852 - 2585.

I look forward to receiving your determination with respect to my request for expedited processing **within 10 calendar days**, as required by FOIA. Thank you in advance for your assistance.

Sincerely,


Azmat Khan

Investigative Reporter
The New York Times